

No. 01-20-00004-CR & No. 01-20-00005-CR

In the Court of Appeals for the
First District of Texas at Houston

FILED IN
1st COURT OF APPEALS
HOUSTON, TEXAS
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CHRISTOPHER A. PRINE
Clerk

Ex parte

JOSEPH ERIC GOMEZ,
Appellant

On Appeal from Trial Court Case No. 1657519 and 1657521
Before the 338th Judicial District Court of Harris County, Texas

**APPELLANT'S MOTION TO MAINTAIN
STATUS QUO AND PERMIT HIM TO REMAIN FREE ON BOND
PENDING COURT'S REVIEW**

TO THE HONORABLE COURT OF APPEALS:

JOSEPH ERIC GOMEZ, Appellant before this Court, by and through undersigned counsel, moves this Court to maintain the status quo, permitting Respondent/Appellant to remain free on bond pending this Court's review of the State's petition.

Procedural History

1. Appellant filed applications for writ of habeas corpus in the trial court after the trial revoked the bonds posted by Appellant in the total amount of \$40,000 (amounts set by the magistrate at a hearing held pursuant to Article 15.17, Texas Code of Criminal Procedure; a magistrate's order for emergency protection and not contact order was also entered prohibiting contact with the complaining witness) without cause and raised the bond amounts to a total of \$150,000. The trial court denied the applications and Appellant /Respondent appealed the judgments to this Court.
2. On August 7, 2020, this Court issued its decision in the appeal, finding that the trial court abused its discretion, reversed the judgments denying the writ applications, ordered that the original \$40,000 bonds be reinstated, and ordered the mandate to take effect immediately. The Harris County District Clerk, following the instructions of the mandate, reinstated Appellant bonds and he was released from custody the following day.
3. The State filed several motions, both in this Court and before the Court of Criminal Appeals, attempting to stay the mandate. This

Court denied the State's Motion to Stay Mandate Pursuant to Rule 31.4 and dismissed all other motions. The Court of Criminal Appeals likewise rejected the State's previously filed motion without prejudice.

4. Following the procedure set out in Rule 31.4(c) of the Texas Rules of Appellate Procedure, the State subsequently presented its motion to stay mandate and appendix (petition for discretionary review) to the Court of Criminal Appeals.
5. Yesterday, the Court of Criminal Appeals issued its *per curiam* order granting the State's motion and ordering this Court to recall the mandates issued in these cases.

The Status Quo Should Remain and Appellant/Respondent Should Remain Free on Bond

6. It is axiomatic that bail is not to be used as an instrument of oppression. The State presumably wants to do exactly that and oppress Appellant who has been released from custody for 23 days now, bound by \$40,000 in surety bonds before the trial court, and subject to conditions of those bonds including not to have any contact with the complaining witness (a condition that Appellant has complied with since it was first ordered back in November 2019).

7. In the 23 days that have passed since his release, Appellant has not done anything to show he is a flight risk or danger to the community. He has remained at his home, seeking employment, and working with his lawyers to prepare a defense in his case, while complying with all other conditions of his bonds.

8. Article 44.35, Texas Code of Criminal Procedure states,

In any habeas corpus proceeding in any court or before any judge in this State where the defendant is remanded to the custody of an officer and an appeal is taken to an appellate court, the defendant shall be allowed bail by the court or judge so remanding the defendant, except in capital cases where the proof is evident. The fact that such defendant is released on bail shall not be grounds for a dismissal of the appeal except in capital cases where the proof is evident.”

TEX. CODE CRIM. PROC. art. 44.35 (West 2020).

9. Because Appellant has given \$40,000 in bail bonds to ensure his appearance before the trial court, there should be no change in the status quo while this Court reviews the State’s petition for discretionary review.

WHEREFORE, PREMISES CONSIDERED, Appellant respectfully requests this Court to maintain the status quo, permitting Appellant

to remain free on bond pending the Court of Criminal Appeals' review of the State's petition.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing instrument has been served on to the attorney for the State, Clint Morgan, Harris County District Attorney's Office, pursuant to Texas Rule of Appellate Procedure 9.5 (b)(1), through Appellant's counsel's electronic filing manager on August 25, 2020.

/s/ T. Brent Mayr
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Associated Case Party: State of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Clint Morgan		morgan_clinton@dao.hctx.net	8/25/2020 12:58:34 PM	SENT